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Item 4 of the provisional agenda

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

HUMAN RIGHTS AND THE ENVIRONMENT

Progress report prepared by Mrs. Fatma Zohra Ksentini, Special Rapporteur, in accordance with Sub-Commission resolution 1991/24

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INTRODUCTION

1. In decision 1989/108 of 31 August 1989, adopted without a vote, the Sub-Commission on Prevention of Discrimination and Protection of Minorities asked Mrs. Fatma Zohra Ksentini to prepare, without financial implications, a concise note setting forth methods by which a study could be made of the problem of the environment and its relation to human rights. The Sub-Commission also decided to request the Secretary-General to invite Governments, United Nations bodies concerned, specialized agencies, intergovernmental organizations and non-governmental organizations to submit relevant information and observations, to assist in the preparation of the working paper.

2. In resolution 1990/41 of 6 March 1990 entitled "Human Rights and the environment", the Commission on Human Rights affirmed its awareness of increasing environmental degradation and underscored the link between preservation of the environment and the promotion of human rights. It welcomed the Sub-Commission's decision to have a note prepared for its forty-second session on methods by which a study on the problems of the environment and its relation to human rights could be made.

3. In response to these requests Mrs. Ksentini, Special Rapporteur, submitted a note to the Sub-Commission at its forty-second session containing a number of proposals for a study of the environment and its relation to human rights (E/CN.4/Sub.2/1990/7). After examining the note, the Sub-Commission adopted resolution 1990/7, on 30 August 1990 requesting the Special Rapporteur to present a preliminary report at its forty-third session. In resolution 1990/41 the Sub-Commission invited the Special Rapporteur also to take into account in her study the specific relationship between fragile habitats and indigenous peoples, especially with respect to sustainability.

4. The Commission on Human Rights, in resolution 1991/44, requested the Special Rapporteur to submit a study on human rights and the environment to the Sub-Commission at its forty third session. The Economic and Social Council approved the Commission's recommendation in decision 1991/244.

5. The Sub-Commission examined the preliminary report in document E/CN.4/Sub.2/1991/8 and took note of it with satisfaction. In resolution 1991/24 it requested the Special Rapporteur to submit a progress report at its forty-fourth session taking into account the comments made in the discussion of the preliminary report.

6. At its 1992 session the Commission on Human Rights endorsed this request in decision 1992/110.

7. This progress report on human rights and the environment is submitted to the Sub-Commission in accordance with the terms of reference assigned to the Special Rapporteur by the Economic and Social Council, the Commission and the Sub-Commission. The report will not revert to the analysis of the relationship of environmental rights to other human rights undertaken in the preliminary report (E/CN.4/Sub.2/1991/8). Its main purpose is to review developments in regard to the recognition and implementation of environmental rights as human rights.

CHAPTER I

National and regional provisions

A. Constitutional provisions

8. Although national constitutions do not establish environmental rights as human rights, more and more constitutions more or less explicitly recognize the right to a healthy environment and set out specific provisions directed towards the protection of the environment and laying a duty on the State and State agencies and in some cases prescribing the rights or obligations of individuals. Some constitutions specifically lay down the State's duty to protect and preserve the environment. Others provide that protection is the responsibility of the State and of citizens. In others, responsibility is assigned to citizens alone, to the community at large, to economic or social organizations, to national institutions etc. The content and scope of constitutional provisions differ from country to country. 1/ Extracts from the constitutions of 49 countries are given below.

1. Albania

9. 1976 Constitution - chapter 1B, art. 20: Protection of the land, natural riches, waters and the atmosphere from damage and pollution is a duty of the State, of economic and social organizations, and of all citizens.

2. Algeria

10. 1989 Revision of Constitution, title I, chapter 3, art. 17: Public property is an asset of the national collectivity. It encompasses the subsoil, the mines and quarries, the sources of natural energy, the mineral, natural and living resources of the different zones, the national maritime zone, the waters and the forests ... .

Title I, chapter 3, art. 63: Every citizen has the duty to protect public property and the interests of the national collectivity and to respect the property of others.

3. Germany

11. 1990 Addition to the Basic Law, Treaty between the Federal Republic of Germany and the German Democratic Republic on the Establishment of German Unity.

Chapter VII, art. 34: Protection of the Environment

(1) On the basis of the German environmental union established under Article 16 of the Treaty of 18 May 1990 in conjunction with the Skeleton Environment Act of the German Democratic Republic of 29 June 1990 (Law Gazette 1, No. 42, p. 649), it shall be the task of the legislators to protect the natural basis of man's existence, with due regard for prevention, the polluter-pays principle, and cooperation, and to promote uniform ecological conditions of a high standard at least equivalent to that reached in the Federal Republic of Germany.

(2) With a view to attaining the objective defined in paragraph 1 above, ecological rehabilitation and development programmes shall be drawn up for the territory specified in Article 3 of this Treaty, in line with the distribution of competence under the Basic Law. Measures to ward off dangers to public health shall be accorded priority.

4. Bahrain

12. 1973 Constitution, part II, art. 11: All natural resources shall be the property of the State. It shall ensure their preservation and proper utilization, due regard being given to the requirements of the State's security and national economy.

5. Bolivia

13. 1967 Constitution, art. 137: Assets in the patrimony of the nation constitute public property which is inviolable, and it is the duty of every inhabitant of the national territory to respect and protect it.

6. Brazil

14. 1988 Constitution, art. 23: The Union, the States, the Federal District, and the Municipalities have a common responsibility to:

...

VI. Protect the environment and combat pollution in all its forms;

VII. Preserve the forests, fauna, and flora.

Title VIII, chapter VI, art. 225: Everyone is entitled to an ecologically balanced environment, which is an asset of everyday use to the common man and essential to a healthy quality of life; this imposes a duty on the Government and the community to protect and preserve it for the present and future generations.

Para. 1. In order to assure that this right is effectively available, it is incumbent on the Government to:

I. Preserve and restore essential ecological processes and arrange for the ecological management of species and ecosystems;

II. Preserve the diversity and integrity of the genetic patrimony of Brazil and oversee the entities that are engaged in research and manipulation of genetic material;

III. Define, in all the units of the Federation, the geographical spaces and components thereof that are to be specially protected; these may be changed, or deleted only by law, and any use that compromises the integrity of the features which justify protection of such areas is prohibited;

IV. Require, pursuant to law, that an environmental impact study be made prior to the installation of a project or activity that may potentially cause significant harm to the environment, and that the results of such study be publicized;

V. Control the production, marketing, and use of techniques, methods, and substances that pose a risk to life, the quality of life, and the environment;

VI. Promote environmental education at all levels of instruction and help to increase public awareness of the need to preserve the environment;

VII. Protect the flora and fauna; practices that place their ecological function at risk, lead to the extinction of species, or submit animals to cruel treatment are hereby prohibited;

Para. 2. Anyone who exploits mineral resources is obliged to restore the damaged environment by such technical means as may be required by the appropriate public agency, pursuant to law.

Para. 3. Behaviour and activities deemed injurious to the environment shall subject the violators, whether individuals or legal entities, to criminal and administrative penalties, apart from the obligation to repair the damages caused.

Para. 4. The Brazilian Amazonian forest, the Atlantic jungle, the Serra do Mar mountain range, the Mato Grosso Swamp, and the Coastal Zone are part of the national patrimony and are to be utilized, pursuant to law, under terms and conditions that assure the preservation of the environment; this also applies to the use of the natural resources.

Para. 5. Lands vacated or taken over by the States through adjudication ["acao discriminatoria"] and needed in order to protect the natural ecosystems may not be made available for any purpose.

Para. 6. The location of power plants that employ a nuclear reactor must be defined in federal law; no such facility may be installed until such determination has been made.

Chapter VIII, art. 231 (special Indian rights): Indian social structure, customs, languages, beliefs, and traditions are recognized, as well as their native rights to the lands that they traditionally occupy, it being the province of the Union to establish the boundaries thereof and to protect all the [Indian] assets and see that same are respected.

Para. 1. Lands traditionally occupied by the Indians are deemed to be those inhabited permanently by Indians, those used for their productive activities, those essential to the preservation of the environmental resources necessary to their welfare, and those necessary to their physical and cultural reproduction according to their uses, customs, and traditions.

7. Bulgaria

15. 1991 Constitution, chapter II, art. 31: The State bodies and enterprises, the cooperatives and public organizations, as well as every citizen, are duty-bound to protect and preserve nature and natural resources, the water, air and soil, as well as the cultural monuments.

8. Burkina Faso

16. 1991 Constitution, title I, art. 30: The right to a healthy environment shall be recognized; the protection, defence and promotion of the environment shall be a duty for all.

Title I, art. 31: Every citizen shall have the right to initiate an action or to join a collective action under the form of a petition against these acts:

- harming the public heritage;
- harming the interests of social communities;
- harming the environment or the cultural or artistic heritage.

9. Chile

17. 1980 Constitution, chapter III, art. 19 (8): The Constitution guarantees to all persons:

...

The right to live in an environment free from contamination. It is the duty of the State to watch over the protection of this right and the preservation of nature. The law may establish specific restrictions on the exercise of certain rights or freedoms in order to protect the environment.

Chapter III, art. 19 (24): The Constitution guarantees to all persons:

...

The right of ownership in its diverse aspects over all classes of corporeal and incorporeal property. Only the law may establish the manner to acquire property and to use, enjoy and dispose of it, and the limitations and obligations derived from its social function. Said function includes all the requirements of the Nation's general interests, the national security, public use and health, and the conservation of the environmental patrimony ...

Chapter III, art. 20: He who should, due to arbitrary or illegal actions or omissions, suffer privation, disturbance or threat in the legitimate exercise of the rights and guarantees established in Article 19 ... may, on his own, through a third party, resort to the respective Court of Appeals, which shall immediately take the steps that it should deem necessary to

re-establish the rule of law and assure due protection to the person affected, without prejudice to the other rights which he might invoke before the authorities or the corresponding courts.

The recourse of protection in the case of paragraph 8 of article 19, shall also be applied when the right to live in a contamination-free atmosphere has been affected by an arbitrary or unlawful action imputable to an authority or specific person.

10. China

18. 1982 Constitution, chapter I, art. 9: The State ensures the rational use of natural resources and protects rare animals and plants. The appropriation or damage of natural resources by any organization or individual by whatever means is prohibited.

Art. 26: The State protects and improves the living environment and the ecological environment, and prevents and remedies pollution and other public hazards.

11. Colombia

19. 1991 Constitution, art. 8: It is the obligation of the Government and the people to protect the cultural and natural assets of the nation.

Art. 49: Public health and environmental protection are public services for which the State is responsible. All individuals are guaranteed access to services that promote, protect, and rehabilitate public health.

It is the responsibility of the State to organize, direct, and regulate the delivery of health services and of environmental protection to the population in accordance with the principles of efficiency, universality, and solidarity ...

Art. 79: Every individual has the right to enjoy a healthy environment. The Law shall guarantee the participation of the community in decisions that may affect it.

It is the duty of the State to protect the diversity and integrity of the environment, conserve areas of special ecological importance, and promote education for the attainment of these ends.

Art. 80: The State shall plan the management and use of natural resources in order to guarantee their sustainable development, conservation, and restoration or replacement.

Additionally, the State will have to caution and control the factors of environmental degradation, impose legal sanctions and demand reparation for damages caused.

Likewise, the State shall cooperate with other nations in the protection of ecosystems situated in the border areas.

Art. 86: Every individual may claim legal protection to claim before the judges, at any time or place, through a preferential and summary proceeding, for himself/herself or by whoever acts in his/her name, the immediate protection of his/her fundamental constitutional rights when the individual fears the latter may be jeopardized or threatened by the action or omission of any public authority.

Art. 88: The law will regulate popular actions for the protection of collective rights and interests related to the homeland, space, public safety and health, administrative morality, the environment, free economic competition, and other areas of similar nature defined in it.

It will also regulate the actions stemming from the harm caused to a large number of individuals, without barring appropriate individual action.

12. Korea

20. 1987 Constitution, chapter II, art. 35:

> (1) All citizens shall have the right to a healthy and pleasant environment. The State and all citizens shall endeavour to protect the environment.
>
> (2) The substance of the environmental right shall be determined by law.

13. United Arab Emirates

21. 1971 Constitution, chapter 2, art. 23: The natural resources and wealth in each Emirate shall be considered the public property of that Emirate. Society shall be responsible for the protection and proper exploitation of such natural resources and wealth for the benefit of the national economy.

14. Ecuador

22. 1983 Constitution, title II, section 1, art. 19 (2): Without prejudice to other rights necessary for a complete moral and material development that derives from the persons's nature, the State guarantees:

> ...
>
> 2. The right to live in an environment free of contamination. It is the duty of the State to be vigilant so that this right should not be affected and to guard nature's preservation. The law will establish the restrictions to exercise certain rights or liberties so as to protect the environment ...

15. Spain

23. 1978 Constitution, chapter III, art. 45:

> 1. Everyone has the right to enjoy an environment suitable for the development of the person as well as the duty to preserve it.

2. The public authorities shall concern themselves with the rational use of all natural resources for the purpose of protecting and improving the quality of life and protecting and restoring the environment, supporting themselves on an indispensable collective solidarity.

3. For those who violate the provisions of the foregoing paragraph, penal or administrative sanctions as applicable, shall be established and they shall be obliged to repair the damage caused.

16. Ethiopia

24. 1987 Constitution, part II, art. 10:

1. The State shall ensure that the ecological balance is maintained and, by ensuring the conservation and development of natural resources, particularly land, water, forest, and wildlife, it shall guarantee their utilization for the benefit of the working people.

2. The State shall ensure that human settlement patterns correspond to the distribution of natural resources in order to create favourable conditions for development.

Part II, art. 55: Ethiopians have the duty to protect and conserve nature and natural resources, especially to develop forests and to protect and care for soil and water resources.

17. Russian Federation

25. 1991 Draft Constitution, chapter VII, art. 56:

(1) Everyone is obligated to protect nature, to protect its wealth, improve the environment.

(2) Violation of the established norms of environmental protection is punishable by law. Damage inflicted to a citizen, his health or property by unlawful exploitation of natural resources is subject to compensation.

Chapter VII, art. 64:

(1) The land and its mineral wealth, water resources, plant and animal life in their natural state are the property of the peoples living on this territory. Ownership, utilization and use of natural resources may not be carried out to the detriment of the interests of these peoples.

(2) All natural resources are subject to protection and rational use.

(3) Land users are obligated to treat land with care, increase its fertility.

18. Greece

26. 1975 Constitution, part II, art. 24:

1. The protection of the natural and cultural environment constitutes a duty of the State. The State is bound to adopt special preventive or repressive measures for the preservation of the environment.

19. Guatemala

27. 1985 Constitution, chapter II, section VII, art. 97: The State, the municipalities, and the inhabitants of the national territory are obliged to promote social, economic, and technological development that would prevent the contamination of the environment and maintain the ecological balance. It will issue all the necessary regulations to guarantee that the use of the fauna, flora, land, and water may be realized rationally, obviating their depredation.

20. Equatorial Guinea

28. 1982 Constitution, title VI, chapter II, art. 60: The State recognizes the right to the protection of health. It is incumbent on the State to organize and to protect public health, through the preventative measures of improvement of the environment of the cities and towns ...

21. Guyana

29. 1980 Constitution, art. 25: Every citizen has a duty to participate in activities to improve the environment and protect the health of the nation.

Art. 36: In the interests of the present and future generations, the State will protect and make rational use of its land, mineral, and water resources, as well as its fauna and flora, and will take all appropriate measures to conserve and improve the environment.

22. Haiti

30. 1987 Constitution, title III, section J, chapter 3, art. 52-1 (h): Civic duties are the citizen's moral, political, social and economic obligations as a whole to the State and the country. These obligations are:

...

(h) to respect and protect the environment.

Title XI, chapter II, art. 253: Since the environment is the framework of the life of the people, any practices that might disturb the ecological balance are strictly forbidden.

Title XI, chapter II, art. 256: Within the framework of protecting the environment and public education, the State has the obligation to proceed to establish and maintain botanical and zoological gardens at certain points in its territory.

Title XI, chapter II, art. 258: No one may introduce into the country wastes or residues of any kind from foreign sources.

23. Honduras

31. 1982 Constitution, chapter VII, art. 145: The State shall maintain a satisfactory environment for the protection of everyone's health.

24. Hungary

32. 1980 Consolidated text, chapter I, section 18: The Republic of Hungary recognizes and enforces everyone's right to a healthy environment.

Chapter XII, section 70/D:

(1) Everyone living within the territories of the Republic of Hungary has the right to the highest attainable standard of physical and mental health.

(2) The Republic of Hungary realizes this right by making labor safety and medical care available, as well as by the protection of the man-made and natural environment.

25. India

33. 1977 Constitution, as amended by the Constitution Act of 1985, part IV, art. 48-A: The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

Part IV, art. 51-A: It shall be the duty of every citizen of India:

...

(g) to protect and improve the natural environment, comprised of the forests, lakes, rivers, and wildlife, and to have compassion for living creatures.

26. Islamic Republic of Iran

34. 1980 Constitution, chapter IV, art. 50: Protecting the environment in which the present generation lives and in which future generations will develop socially is considered a public responsibility in the Islamic Republic. Therefore, economic activities, and other activities which may pollute the environment or destroy it irrevocably, shall be forbidden.

27. Mexico

35. 1917 Constitution, with amendments to 1987, art. 27: The Nation shall at all times have the right to impose on private property such limitations as the public interest may demand, as well as the right to regulate the utilization of natural resources which are susceptible of appropriation, in order to conserve them to ensure a more equitable distribution of public wealth, to attain a well-balanced development of the country and improvement of the

living conditions of the rural and urban population. With this end in view, necessary measures shall be taken to put order to human settlements and establish adequate lands, waters and forests provisions, uses, reserves and purposes, so as to carry out public works and to plan and regulate the foundation, conservation, betterment and growth of the centers of population; to preserve and restore the ecological balance; to prevent the destruction of natural resources, and to protect property from damage to the detriment of society ...

28. Mozambique

36. 1990 Draft Constitution, part 1, art. 11: The State shall promote knowledge, surveys and evaluation of natural resources, guaranteeing the ecological balance and the conservation and preservation of the environment.

29. Namibia

37. 1990 Constitution, chapter II, art. 95: The State shall actively promote and maintain the welfare of the people by adopting, inter alia, policies aimed at the following:

...

(L) maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilization of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future; in particular, the Government shall provide measures against the dumping or recycling of foreign nuclear and toxic waste on Namibian territory.

30. Nicaragua

38. 1987 Constitution, title IV, chapter III, art. 60: Nicaraguans have the right to live in a healthy environment and it is the obligation of the State to preserve, conserve and recover the environment and the natural resources of the country.

Title VI, chapter I, art. 102: The natural resources and national patrimony. The preservation of the environment, and the conservation, development and national exploitation of the natural resources are responsibilities of the State; the State may formalize contracts for the national exploitations of these resources when required by the national interest.

31. Nigeria

39. 1979 Constitution, chapter II, art. 18:

(1) The State social order is founded on ideas of Freedom, Equality and Justice.

(2) In furtherance of the social order:

...

(c) exploitation of human or natural resources in any form whatsoever for reasons other than the good of the community shall be prevented.

32. Panama

40. 1980 Constitution, chapter VI, art. 110: It is a fundamental duty of the State to see to the conservation of ecological conditions, preventing pollution of the environment and imbalance in ecosystems, in accordance with the economic and social development of the country.

33. Papua New Guinea

41. 1984 Constitution, chapter IV, preamble:

4. Natural Resources and Environment

We declare our fourth goal to be for Papua New Guinea's natural resources and environment to be conserved and used for the collective benefit of us all, and be replenished for the benefit of future generations.

We accordingly call for:

(1) wise use to be made of our natural resources and the environment in and on the land or seabed, in the sea, under the land, and in the air, in the interests of our development and in trust for future generations; and

(2) the conservation and replenishment, for the benefit of ourselves and posterity, of the environment and its sacred, scenic and historical qualities; and

(3) all necessary steps to be taken to give adequate protection to our valued birds, animals, fish, insects, plants and trees.

Basic Social Obligations

We hereby declare that all persons in our country have the following basic obligations to themselves and their descendants, to each other, and to the Nation:

...

(d) to protect Papua New Guinea and to safeguard the national wealth, resources and environment in the interests not only of the present generation but also of future generations ...

Chapter 53, section 1:

(5) Nothing in the preceding provisions of this section [relating to the protection from unjust deprivation of property] prevents:

...

(f) any restriction on the use of or on dealing with property or any interest in or right over any property that is reasonably necessary for the preservation of the environment or of the national cultural inheritance.

34. Paraguay

42. 1967 Constitution, chapter VI, art. 132: The State shall conserve the forestry resources of the country as well as other renewable natural resources. To this end it shall issue guidelines for rational conservation, renewal, and exploitation of resources.

35. Netherlands

43. 1987 Constitution, art. 20:

1. It shall be the concern of the authorities to secure the means of subsistence of the population and to achieve the distribution of wealth.

Art. 21: It shall be the concern of the authorities to keep the country habitable and to protect and improve the environment.

36. Peru

44. 1979 Constitution, chapter II, art. 118: Natural resources, renewable and non-renewable, are the patrimony of the nation.

Minerals, land, forests, waters, and in general all natural resources and sources of energy belong to the State. The law determines the conditions of their use by the latter and their availability to private parties.

Chapter II, art. 123: Everyone has the right to live in a healthy environment, ecologically balanced and adequate for the development of life and the preservation of the countryside and nature. Everyone has the duty to conserve said environment.

It is the obligation of the State to prevent and control environmental pollution.

37. Philippines

45. 1986 Constitution, art. XII:

National Economy and Patrimony

Section 2 ... The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

Agrarian and Natural Resources Reform

Section 7. The State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of the communal marine and fishing resources, both inland and offshore ... The State shall

also protect, develop, and conserve such resources. The protections shall extend to offshore fishing grounds of subsistence fishermen against foreign intrusion. Fishworkers shall receive a just share from their labor in the utilization of marine and fishing resources.

38. Poland

46. 1989 Constitution, chapter VIII, art. 71: Citizens of the Republic of Poland shall have the right to benefit from the natural environment and it shall be their duty to protect it.

39. Portugal

47. 1982 Constitution, part I, section III, chapter II, art. 66:

Environment and Quality of Life

1. Everyone shall have the right to a healthy and ecologically balanced human environment and the duty to defend it.

2. It shall be the duty of the State, acting through appropriate bodies and having recourse to or taking support on popular initiatives, to:

(a) Prevent and control pollution, its effects and harmful forms of erosion;

(b) Order and promote regional planning aimed at achieving a proper location of activities, a balanced social and economic development, and resulting in biologically balanced landscapes;

(c) Create and develop natural reserves and parks and recreation areas and classify and protect landscapes and sites so as to ensure the conservation of nature and the preservation of cultural assets of historical or artistic interest;

(d) Promote the rational use of natural resources, safeguarding their capacity for renewal and ecological stability.

Section II, art. 81: In the economic and social sphere the prime duties of the State shall be:

...

to adopt a national energies policy that is in keeping with the conservation of natural resources and ecological balances, whilst promoting international cooperation in this field.

Section II, art. 91: The objectives of plans of economic and social development shall be to promote ... the conservation of the ecological balances, the safeguarding of the environment and the quality of life of the Portuguese people.

40. Romania

48. 1991 Draft Constitution, art. 22:

... The law shall establish measures to ensure a healthy, balanced environment; the development of towns within the framework of modern town-planning; the healthy development of children; the reduction of newborn and infant mortality; the prophylaxis and treatment of diseases; the control of epidemics.

41. Sri Lanka

49. 1977 Constitution, chapter VI, art. 27, para. 14: The State shall protect, preserve and improve the environment for the benefit of the community.

Chapter VI, art. 28: The exercise and enjoyment of rights and freedoms is inseparable from the performance of duties and obligations, and accordingly it is the duty of every person in Sri Lanka:

...

(f) to protect nature and conserve its riches.

42. Sweden

50. 1975 Constitution, as amended to 1978, chapter I, art. 2, para. 2: The personal, economic and cultural welfare of the individual shall be fundamental aims of the activities of the community. In particular, it shall be incumbent upon the community to secure the right to work, to housing and to education and to promote social care and security as well as a favourable living environment.

43. Taiwan

51. 1947 Constitution, chapter XIII, section 6, art. 169: The State shall, in a positive manner, undertake and foster the development of education, culture, communications, water conservancy, public health, and other economic and social enterprises of the various racial groups in the frontier regions. With respect to utilization of land, the State shall, after taking into account the climatic conditions, the nature of the soil, and the life and habits of the people, adopt measures to protect the land and to assist in its development.

44. Tanzania

52. 1984 Constitution, section 2, para. 9 (1): ... the authority of the State and all its instruments must direct all their activities and policies towards the task of ensuring:

...

(c) that the affairs of government are carried out in such a way as to ensure that the natural resources of the nation are developed, preserved and utilized for the benefit of all citizens in general and also to guard against exploitation of man by man ...

Section 2, para. 27 (1): Everyone has the responsibility of conserving the natural resources of the Union Republic, property under the care of the State and all properties under the jurisdiction of the public, and also to respect the property of others.

45. Thailand

53. 1978 Constitution, chapter V, section 65: The State should conserve the environmental balance and eliminate pollution, which jeopardizes the health and hygiene of the people.

Chapter V, section 69: The State should have a demographic policy appropriate for natural resources, economic and social conditions, and technological progress for the purpose of economic and social development and for the security of the State.

46. Turkey

54. 1982 Constitution, Chapter VIII (A), art. 56: Everyone has the right to live in a healthy, balanced environment.

It is the duty of the State and the citizens to improve the natural environment, and to prevent environmental pollution.

47. Vanuatu

55. 1980 Constitution, chapter 2, part 2, art. 7: Every person has the following fundamental duties to himself and his descendants and others:

...

(d) to protect (Vanuatu) and to safeguard the national wealth, resources and environment in the interests of the present generation and of future generations.

48. Viet Nam

56. 1980 Constitution, chapter 2, art. 19: The lands, forests, rivers and lakes, mines, natural resources in the ground, in the territorial seas and on the continental shelf ... and other property defined by the law as belonging to the State are under the ownership of the entire people.

Art. 20: Collectives and individuals who use the land have the responsibility to protect, replenish and exploit it in keeping with State policies and plans.

Art. 36: All State organs, factories, cooperatives, units of the people's armed forces and citizens have the duty to implement the policy of protecting, transforming and renewing natural resources, and of protecting and improving the environment.

49. Yugoslavia

57. 1974 Constitution, introduction, V, para. 6: In order to conserve and improve the human environment, working people and citizens, organizations of associated labor, other self-managing organizations and communities, and socialist society shall ensure conditions to preserve and improve natural and other values of the human environment conducive to a healthy, safe, and active life and work for the present and future generations.

Part II, chapter I, 11 art. 87: Working people and citizens [and] organizations ... shall have the right and duty to assure conditions for the conservation and improvement of the natural and man-made values of the human environment, and to prevent or eliminate harmful consequences of air, soil, water, sea, waterways, or noise pollution, or other kinds of pollution which endanger such values and imperil the health and lives of people.

Part II, chapter II, art. 114: Working people and citizens in a local community shall decide on the realization of their common interests and on the satisfaction, on the basis of solidarity, of their common needs in the fields of: ... conservation and improvement of the human environment ...

Part II, chapter II, art. 117: Citizens in a Commune shall in particular: ... ensure the realization and safeguard of the freedoms, rights and duties of man and the citizen ... regulate the use of land and of goods in public use ... regulate and assure conservation and improvement of the human environment.

B. National provisions

58. Side by side with the constitutional evolution, there is a trend towards the recognition of environmental rights in national legislation. At this stage, however, the existence of a human right to a satisfactory environment emerges more clearly from constitutional provisions than from domestic legislation. In countries without a written constitution, like the United Kingdom, human rights guarantees related to the environment must of course be sought in statutory provisions.

59. In national legislation the transition from environmental law to recognition of a human right to a satisfactory environment is not easily effected. This may be explained by the fact that the scope, form and content of an environmental right are as yet undefined. At present we are dealing with a general social value rather than a legal principle. National environmental legislation embodies the general notion of an environmental right without committing the State to the formulation of precise rules. However, as was pointed out in the preliminary report (E/CN.4/Sub.2/1991/8, para. 76 et seq.), justiciability is not the prerequisite for recognition of a right. Environmental rights may indeed lend themselves to implementation through a procedural approach.

60. The form of individual protection very often depends upon the legal system itself. Some systems expressly provide substantive legal rights which can be enforced by procedural provisions within an administrative structure or the courts. Other legal systems grant only procedural rights and give access to administrative procedures or to courts based solely upon an actual interest. In the preliminary report, examples of national environmental legislation were cited. Some additional examples, illustrating the diversity of national legislation, are given below.

61. The Algerian Environment Code, for example, states that environment policy is aimed at:

- the protection and development of natural resources;
- conservation and the prevention of pollution and nuisances;
- improvement of the context and quality of life. 2/

The Algerian legislature's objective was to solve environmental problems through measures that would not jeopardize the balance between development and the environment. A decree stated that environmental issues involved improvement of the context and conditions of life and the conservation and restoration of biological resources, problems of pollution and nuisances of all kinds and all the elements which go to make up the human environment.

62. In Greece, Law No. 1650/86 on environmental protection states that its general purpose is to provide a legislative framework for the conservation and protection of the environment so that the quality of life for men and women, as individuals and as members of society, will improve and their personalities and health will be safeguarded. 3/ Among other objectives, the law mentions the protection of the health of individuals from various assaults on the environment. It is a matter of interest that the law adopts the principle of prevention and lays down that protection of the environment should be built into economic development procedures, thus accepting that prevention is consistent with economic development. The same principles are set out in European Community policy. Community law provides for compensation for interests injured by measures to protect the environment.

63. The French law of 22 October 1991 on the protection and improvement of the coastline stipulates, in a section dealing with implementation, that the State must guarantee strict respect for the principles laid down in the law while giving due weight to local conditions affecting respect for those principles. 4/

64. The European Community's draft charter on environmental rights and obligations of 21 February 1990 provides that individuals should have access to an extensive range of administrative and judicial procedures and remedies for the prevention and correction of environmental damage and the right to participate in decision-making. In article 23 it calls on member States to embody these rights in their national legislation.

65. Some aspects of the notion of environmental rights are to be found in the legal systems of countries which have not established such rights as a constitutional principle. Thus, under the National Environmental Policy Act (NEPA) enacted by the United States in 1969 the Federal Government promises to "use all practicable means ... that the Nation may (1) fulfil the responsibilities of each generation as trustee of the environment for succeeding generations; (2) assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings." Further, the Congress "recognizes that each person should enjoy a healthful environment and each person has a responsibility to contribute to the preservation and enhancement of the environment."

66. Another example of domestic legislation specifying environmental rights and duties not embodied in the constitution is Indonesia's Law No. 4 of 1982, entitled "Basic Provisions for the Management of the Living Environment." Not only does this Act declare that "every person has the right to a good and healthy living environment" and the "obligation to maintain the living environment" (section III, art. 5), but also that everyone has "the right and obligation to participate in the management of the living environment" (section III, art. 6).

67. In May 1990, the Chinese State Council enacted two laws, the first of their kind in China, designed to tighten inspection and control over the discharge of waste into the sea. Promulgated by the State Agency of Environmental Protection, they entered into force in August 1990. The first, Regulations on the Control and Treatment of Pollutants, stipulates that any units or individuals discharging pollutants into the sea must inform the local environmental protection administrations and obtain their approval. The second, Regulations on the Construction of Coastal Projects, provides that every new industrial project, including joint ventures and foreign funded projects, must be the subject of an environmental impact assessment. 5/

C. Regional provisions

68. An important development in Africa was the adoption at Bamako (Mali) on 30 January 1991 of the Bamako Convention on the ban of the import into Africa and the control of the transboundary movement and management of hazardous wastes in Africa. 6/ Article 13 (1) provides that the parties "shall ensure that in the case of an accident occurring during the transboundary movement of hazardous wastes or their disposal which is likely to present risks to human health and the environment in other States those States are immediately informed".

69. In related development, the Organization of African Unity adopted the African Charter for Popular Participation in Development and Transformation (E/ECA/CM.16/11) at Arusha, Tanzania on 16 February 1990. Paragraph 9 of the Charter refers to Africa's grave environmental and ecological crisis, which cannot be solved in the absence of a process of sustainable development commanding the full support and participation of the people. In a subsequent paragraph, the Charter states that popular participation is the fundamental right of the people to fully and effectively participate in the determination of the decisions which affect their lives at all levels and at all times.

70. Another important development is the Arab Declaration on Environment and Development and Future Perspectives, adopted by the Arab Ministerial Conference on Environment and Development, at Cairo in September 1991. In paragraph 1 the ministers affirmed their commitment to encourage just participation in sustainable and environmentally sound development. In paragraph 4, they affirmed the right of individuals and non-governmental organizations to acquire information about environmental issues relevant to them, and called upon the international community to endorse the right of the Arab people, as the guardian of its environment, to protect its natural resources for the benefit of present and future generations (A/46/632).

71. The Declaration of Brasilia was adopted by the Ministers of State in charge of environmental management participating in the sixth Ministerial Meeting on the Environment in Latin America and the Caribbean on 31 March 1989. In the Declaration, the participants recognized the imperative need to strike a balance between socio-economic development and environmental protection and conservation through the proper management of natural resources. The participants recognized that in Latin America, as in other parts of the Third World, underdevelopment and environmental deterioration were factors in a vicious circle that condemned millions of people to a quality of life beneath the norms of human dignity. 7/

72. The final text of a CSCE meeting on the environment held at Sofia in October/November 1989 contained the following declaration: 8/

> "The participating States reaffirm their respect for the right of individuals, groups and organizations concerned with environmental issues to express freely their views, to associate with others, to peacefully assemble, as well as to obtain, publish and distribute information on these issues, without legal and administrative impediments inconsistent with the CSCE provisions. These individuals, groups and organizations have the right to participate in public debates on environmental issues, as well as to establish and maintain direct and independent contacts at national and international levels.
>
> "The participating States will also encourage education and instruction on environmental protection, promote the reproduction, circulation and exchange of information and data, as well as of audiovisual and printed material, on environmental issues, and encourage public access to such information, data and material.
>
> "The participating States will also stimulate exchange of information and environmental data, and foster scientific and technological cooperation in order to prevent and reduce the risk of environmental disasters."

On the basis of the discussions held during the meeting, the participating States recommended:

(a) that ECE elaborate an international convention, code of practice or other appropriate legal instruments on the prevention and control of the transboundary effects of industrial accidents; 9/

(b) the development of international exchanges of information and the coordination of efforts in order to achieve closer harmonization concerning the management of hazardous chemicals;

(c) that ECE elaborate a framework convention on the protection and use of transboundary watercourses and international lakes. 10/

CHAPTER II

Decisions and comments of regional human rights bodies

A. European Social Charter (1961)

73. The Special Rapporteur wishes to comment briefly on the relationship between environmental protection and the guarantee of the right to health contained in article 11 of the 1961 European Social Charter. In considering national reports under the Charter, the Committee of Independent Experts has in recent years taken into account measures at the national level, under article 11 to prevent, limit or control pollution. 11/ With regard to the removal of causes of ill-health (art. 11 (1)), the Committee has concentrated on measures to prevent or reduce pollution of the atmosphere. 12/ For example, in considering a French report, the Committee took note of the intention of the authorities to achieve a 50% reduction in sulphur dioxide emissions into the atmosphere during the period 1980-90. 13/ In considering the most recent Danish report, the Committee noted the measures taken to reduce air pollution, in particular the commitment to reduce nitrogen oxide emissions by 50% before 2005 and sulphur dioxide emission by 40% before 1995. 14/

74. The collection Case Law on the European Social Charter, contains other useful information. The Committee of Independent Experts has expressed the wish that future national reports should contain information under article 11 of the Charter on measures taken to reduce releases of sulphur dioxide and other acid pollutants into the atmosphere. 15/ The Committee has called for broader measures to control environmental pollution. 16/ The Committee has also expressed the view that States bound by article 11 of the Charter should be considered as fulfilling their obligations in that respect if they provide evidence of the existence of a medical and health system comprising inter alia "general measures aimed in particular at the prevention of air and water pollution, protection from radioactive substances, noise abatement, food control, environmental hygiene and the control of alcoholism and drugs". 17/

B. Environmental information and the European Convention on Human Rights 18/

75. In recent years the bodies set up by the Convention in Strasburg have worked on this matter. In 1975 the Committee of Experts on Human Rights was instructed to make recommendations on the extension of the right to freedom of information under article 10. This would imply a corresponding duty on the part of the authorities to make information available on matters of public interest, subject to appropriate limitations. The Committee suggested to the Committee of Ministers that freedom to seek information should be included in article 10, paragraph 1 and prepared a draft additional protocol to the Convention. Under article 6 of the draft protocol the right to freedom of expression would include freedom to seek information, in addition to the freedoms listed in article 10, paragraph 1. The draft has not been signed by the contracting States.

1. The environment as subject matter of the European Convention

76. Environmental protection is not a human right guaranteed by the Convention. The Convention does not recognize environmental rights or the right of the individual to a pleasant environment. The text of the Convention does not state whether assaults on the environment such as pollution or noise can impair rights set out in the Convention. What is more, as environmental protection is not listed as an objective justifying interference with the exercise of rights under the Convention, States cannot restrict those rights even when they are detrimental to the environment.

77. Environmental matters were raised in the Commission as early as 1976. The Commission found that the Convention did not guarantee a right to the conservation of nature. The Court and the Commission have however tackled issues in a way that indirectly protects the environment. Impact on the environment has been at issue in only a very few cases. As the Convention is not concerned with environmental protection, the cases involved either the effects of pollution or other environmental nuisances on an individual or interference with rights protected by the Convention by governmental action to improve the environment. The Court and the Commission have dealt with environmental questions under article 8 and article 1 of Protocol I, as will be seen from the analysis of the case law below.

2. The right to environmental information as guaranteed by the Convention and the European Community Directive on environmental information

78. Like the Convention, European Community Directive 90/313 19/ does not use the term environmental information. It refers to information on the environment. The Directive (art. 2) defines information relating to the environment as any available information in written, visual, aural or data-base form on the state of water, air, soil, fauna, flora, land and natural sites, and on activities (including those which give rise to nuisances such as noise) or measures adversely affecting, or likely to so affect them, and on protective activities or measures, including administrative measures and environmental management programmes. Under article 3 of the Directive, Community member States are to ensure that public authorities are required to make available information relating to the environment to any natural or legal person at his request and without his having to prove an interest.

79. Unlike the Convention, the Directive embodies a general right of access to environmental information, which the public authorities must provide. Under the Convention the right of access to environmental information is limited to specific cases, in particular if the information is of general interest (art. 10), vitally concerns individual privacy (art. 8) or is essential to the safeguarding of life (art. 2). Under both the Convention and the Directive, the State may deny access to information in certain circumstances. The list of restrictions of access to information in article 3, paragraph 2 to 4 of the Directive and in articles 8 and 10, paragraph 2 of the Convention are in principle comparable.

80. In addition to minor differences of detail, the Directive - unlike the Convention - does not require that a restriction should be "necessary in a democratic society". The Directive therefore does not oblige the State to weigh the competing interests in accordance with the principle of proportionality when restricting access to information on the environment. In this respect the Convention gives better protection to the right of access to environmental information. This is of major importance as environmental information of the greatest interest often involves industrial secrets. The Convention provides the principle of proportionality as a means of solving conflicts of interest of this kind. In accordance with the principle of proportionality the Court, for example, ruled that confidential information must be made available not to the applicant but to independent authorities which could decide whether confidentiality should be maintained or the information should be made available to the public.

81. It is important also to note that the Convention, unlike the Directive, is applicable in States not members of the European Community such as the East European member States of the Council of Europe. The Convention is in force in the member countries of the European Community but the Directive does not enter into force until January 1993.

3. The limits under the Convention of a national right to environmental information

82. Contracting States may recognize a comprehensive right to environmental information (e.g. under the EC Directive). According to article 57, the internal law of the contracting States must ensure the effective implementation of all the provisions of the Convention. However, a contracting State regulates the right to environmental information (e.g. as a right to receive information from the authorities or from an individual or as a duty of possible polluters to give information), the right to environmental information may conflict with article 8 (right to privacy) or may be subject to article 6 (right to a fair trial).

4. The limits under the Convention of the European Community Directive on environmental information

83. The Directive is not in conflict with the Convention in regard to the issues discussed. According to article 4 of the Directive, a person whose request for information is refused by the authorities may seek judicial or administrative review of the decision. As the Directive does not compel individuals to provide environmental information, article 4 does not conflict with article 6 of the Convention. However, the refusal of an authority to furnish environmental information may in the circumstances mentioned earlier contravene article 6 of the Convention. In such cases a purely administrative review will not be sufficient.

84. With regard to article 8 of the Convention, article 3, paragraph 2 of the Directive provides that information may be refused if it relates to commercial and industrial secrets, including intellectual property, or the confidentiality of personal data or files. The Directive thus protects individual privacy. There is no conflict with article 8 in this respect.

85. The Convention does not explicitly recognize a right to environmental information but can be interpreted as embodying a right of access to environmental information. Under the Convention a State may be obliged to obtain environmental information from individuals. However, this view is not backed up by the case law of the Court and the Commission. Only a rough outline of a right to environmental information can be deduced from the existing case law. This situation may change if cases involving environmental information issues are brought before the Commission and the Court in which the applicants argue that:

(a) under article 10, the State has a duty to provide information because it is of general importance;

(b) under articles 8 and 2, the environmental hazards threaten the privacy and right to life of the applicant and that the information sought vitally concerns the applicant's privacy and right to life.

C. European Court of Human Rights

86. Recent case law of the European Court of Human Rights reflects the view that the repertory of human rights does not as yet include a right to a satisfactory environment. Judgements in the last two years, nevertheless contain a few references to the impact of the environment on the exercise of recognized human rights. In order to increase the possibility of the eventual recognition of a human right in regard to the environment, it is important to reinforce the related procedural rights or analogous human rights.

87. In Powell and Rayner, 20/ it was contended that noise from operations at London Heathrow Airport impaired the right to privacy (Convention, art. 8) in property situated a few miles from the airport. Although the emission of noise and smoke could be seen as a collateral to a violation of the right to a healthy environment, the applicants were unsuccessful in obtaining a ruling on violation of the right to privacy and the Court did not directly or indirectly rule on the environmental implications of the enjoyment of that right.

88. In paragraph 45 of the judgement, the court stated: "In forming a judgement as to the proper scope of the noise abatement measures for aircraft arriving at and departing from Heathrow Airport, the United Kingdom Government cannot arguably be said to have exceeded the margin of appreciation afforded to them or upset the fair balance required to be struck under article 8". This case appears to imply that certain governmental limitations on the full enjoyment of private property rights are condoned by the Court and this view is reinforced by three subsequent cases.

89. In the Skärby cases, 21/ land which had been private proerty since 1913 became subject to the Swedish Preservation of Natural Resources Act which entered into force on 1 July 1987. Under the Act the property belonging to the Skärby family was listed as an area of national interest from the point of view of natural resources and cultural values. In view of this new Act, the issuance of licences for building on the property was conditioned by the Government's plan to preserve part of the property as a natural park.

90. In its judgement, the Court first ruled on the applicability and alleged violation of article 6 of the Convention under which everyone is entitled to a hearing by a tribunal. The applicants complained that Swedish law did not provide them with access to a court to challege a decision prohibiting them from constructing a building at a specific site on their property. The Court ruled in paragraph 28 of the judgement that the dispute concerned the right to choose the site of a new building, a right provided for in Swedish law. It was therefore a genuine and serious dispute concerning a right and article 6 of the Convention was thus applicable (para. 30). The Court, however, held unanimously that it did not have jurisdiction to examine the complaints concerning articles 8, 17 and 18 of the Convention and article 1 of the Protocol.

91. A subsequent judgement, the Fredin Case, 22/ dealt with a similar limitation on the exercise of private property rights in Sweden. In 1963, a prohibition on the extraction of gravel without a permit was introduced through an amendment to the Nature Protection Act 1952. On 1 July 1973, an amendment to the Nature Conservation Act 1964 - which had left unaffected the need for a permit - empowered the County Administrative Board to revoke permits of over ten years. In May 1980, that Board granted the applicants an exemption from the general prohibition in the 1964 Act against building near the seashore and allowed them to build. The exemption was valid until further notice, but not for longer than the permit to exploit gravel.

92. In paragraph 48 of the judgement, the Court held: "The applicants did not contest the legitimacy of the aim of the 1964 Act, that is the protection of nature. The Court recognizes for its part that in today's society the protection of the environment is an increasingly important consideration". The applicants alleged violation of article 1 of Protocol 1 to the European Convention reading in part "The preceding provisions [every natural or legal person is entitled to the peaceful enjoyment of his possession; no one shall be deprived of his possessions except in the public interest and subject to conditions provided by law], shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with general interest ..." The applicants maintained that the revocation of the gravel permit by the Board at short notice did not strike a fair balance between the individual and general interests involved. The Court, however, concluded in paragraphs 55 and 56 that in view of the special circumstances of the case, the Board's decision to revoke the permit could not be said to be inappropriate or disproportionate.

93. The latest judgement, in Oerlemans v. the Netherlands 23/ concerned the case of a Dutch citizen whose land was designated as a protected natural site in accordance with the 1967 Dutch Nature Protection Act. The Court in paragraph 46 of its judgement ruled that while there was a dispute concerning the lawfulness of the designated order, the legal consequences of the order were that the applicant was no longer free to cultivate his land as he saw fit and was required to seek authorization prior to carrying out activities on his property. The Court thus legitimized restrictions in the public interest on the use of private property in this and the three other judgements summarized above.

D. Inter-American Commission on Human Rights

94. In December 1980, the Inter-American Commission on Human Rights considered a petition submitted on behalf of the Yanomani Indians of Brazil and found that there had been a violation of the right to life within the context of environmental protection and not a violation of an individual or collective human right in regard to the environment. 24/

95. In a petition submitted to the Commission on 1 June 1990 by the Confederación de Nacionalidades Indígenas de la Amazonia Ecuatoriana, 25/ it is alleged that the present and future operations of the Conoco Petroleum Company authorized by the Government threaten the fragile eco-system of the Indians and by the same token the right to life of individual Huarani and their culture and traditional ways of living. 25/ In addition it was contended that governments are under a duty to take affirmative action to protect the right to life and security of person of indigenous people.

CHAPTER III

Decisions and comments of United Nations human rights bodies

96. It was pointed out in the preliminary report (E/CN.4/Sub.2/1991/8), that there was a growing tendency in practice to consider ecological issues in bodies responsible for the protection of human rights. The practice of the various bodies concerned with the implementation of the international conventions on human rights, such as the Committee on Economic, Social and Cultural Rights, the Human Rights Committee, the Committee for the Elimination of Racial Discrimination and the Committee on the Rights of the Child, for example, is, however, still evolving. Moreover, the Special Rapporteur had neither the time nor the resources to undertake a systematic analysis of the proceedings of the bodies concerned. This might well be undertaken at a later date. Below a number of examples, which are by no means exhaustive, are discussed.

A. Committee on the Rights of the Child

97. The Convention on the Rights of the Child lays down various rights whose implementation requires consideration of environmental factors, among them articles 6, 24, 27, 28 and 29, subparagraph (e) of which stipulates that education should endeavour to inculcate respect for the natural environment in the child. The Committee on the Rights of the Child was set up recently and held its first session from 30 September to 18 October 1991. The session was mainly concerned with organizational matters and the preparation of guidelines for the presentation of reports by States parties. It would be interesting to see how the Committee proposes to ensure follow-up of the implementation of the articles cited earlier.

B. Human Rights Committee

98. On the basis of the Optional Protocol to the International Covenant of 1966 on Civil and Political Rights, the Committee may receive and consider communications from individuals alleging violations by States which have recognized the competence of the Committee. Although the 1966 Covenant does not recognize "ecological" rights, it would be interesting to see to what extent communications received by the Committee might be examined in the light of various environmental considerations which affect the rights recognized by the Covenant.

99. In considering the complaint by Bernard Ominayak and the Lubicon Lake Band in Canada (communication No. 167/1984) 26/ the Committee found, in its decision of 26 March 1990, that historical inequities and certain more recent developments, including oil and gas exploration, were threatening the way of life and culture of the Lake Lubicon Band, and were thus violating minority rights (Covenant, art. 27). In this communication the author alleged that the Band had been deprived of its right to live its own life and to dispose freely of its natural resources and riches. Although the Canadian Government, through the Indian Act of 1970 and Treaty No. 8 of 1899, had recognized the Band's right to continue its traditional way of life its land (approximately 10,000 sq. km.) had been expropriated for commercial interest (oil and gas

exploration) and destroyed, thus depriving the Band of its means of subsistence and enjoyment of the right of self-determination. The rapid destruction of the Band's economic base and aboriginal way of life had already caused irreparable injury. The State party denied the allegations that the Band's existence had been threatened and maintained that continued resource development would not cause irreparable injury to the Band's traditional way of life. It submitted that the Band's claim to certain lands in northern Alberta was part of a complex situation that involved a number of competing claims from other native communities in the area, that effective redress in respect of the Band's claims was still available through the courts and through negotiations. The Committee decided in July 1987 that the communication was admissible in so far as it might raise issues under article 27 or other articles of the Covenant.

100. The Committee noted that the question had arisen of whether the claim under article 1 of the Covenant remained, the Committee's decision on admissibility notwithstanding. While all peoples had the right of self-determination and the right to freely determine their political status and pursue their economic, social and cultural development, as stipulated in article 1 of the Covenant, the question whether the Band constituted a "people" was not an issue for the Committee to address under the Optional Protocol. The Protocol provided a procedure under which individuals could claim that their individual rights had been violated. Those rights were set out in part III of the Covenant, articles 6 to 27. There was however no objection to a group of individuals, who claimed to be similarly affected, collectively submitting a communication about alleged breaches of their rights. Although initially couched in terms of article 1 of the Covenant, there was no doubt that many of the claims presented raised issues under article 27. The Committee recognized that the rights protected by article 27 included the right of persons, in community with others, to engage in economic and social activities, which were part of the culture of the community to which they belonged.

101. The Committee concluded that historical inequities, to which the State party had referred, and certain more recent developments threatened the way of life and culture of the Lubicon Lake Band and constituted a violation of article 27 so long as they continued. The State party proposed to rectify the situation by a remedy that the Committee deemed appropriate within the meaning of article 2 of the Covenant.

102. The individual opinion submitted by Mr. Nisuke Ando on the Committee's findings throws light on various environmental aspects which underlay the Committee's decision and underlines the importance of maintaining a balance between the rights of individuals and the needs of progress and development. Mr. Nisuke Ando wrote:

> "I do not oppose the adoption of the Human Rights Committee's views, as they may serve as a warning against the exploitation of natural resources which might cause irreparable damage to the environment of the earth that must be preserved for future generations. However, I am not certain if the situation at issue in the present communication should be viewed as a violation of the provisions of article 27 of the Covenant [...]

It is not impossible that a certain culture is closely linked to a particular way of life and that industrial exploration of natural resources may affect the Band's traditional way of life, including hunting and fishing. In my opinion, the right to enjoy one's own culture should not be understood to imply that the Band's traditional way of life must be preserved intact at all costs. Past history of mankind bears out that technical development has brought about various changes to existing ways of life and thus affected a culture sustained thereon. Indeed, outright refusal by a group in a given society to change its traditional way of life may hamper the economic development of the society as a whole."

C. Committee on Economic, Social and Cultural Rights

103. Examination of the work of the Committee on Economic, Social and Cultural Rights responsible for follow-up of the implementation of the International Covenant of 1966 on Economic, Social and Cultural Rights, although not in depth, points to the existence of a notable tendency to take into account environmental issues that may affect the human rights recognized in the Covenant.

104. In this connection, attention should be drawn to general comment No. 3 (1990) adopted by the Committee at its fifth session on the nature of States parties' obligations. 27/ After noting that the Covenant imposes an obligation on States parties to undertake to guarantee the rights set out without discrimination and to do so by all appropriate means, the Committee notes that each of the States parties undertakes "to take steps, individually and through international assistance and cooperation, especially economic and technical ...". The Committee emphasized that in accordance with Articles 55 and 56 of the United Nations Charter, with well-established principles of international law and with the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights, was an obligation on all States. It was particularly incumbent upon those States which were in a position to assist others. The Committee noted in particular the importance of the Declaration on the Right to Development adopted in General Assembly resolution 41/128 of 4 December 1986 and the need for States parties to take full account of all the principles recognized therein. It emphasized that in the absence of an active programme of international assistance and cooperation on the part of all those States that were in a position to undertake one, "the full realization of economic, social and cultural rights would remain an unfulfilled aspiration ...".

105. Secondly, in its revised guidelines for the form and content of reports, 28/ the Committee requested information which, in the case of certain articles of the Covenant, relate to the environment. By way of example, reference may be made to the guidelines relating to articles 11, 12 and 15.

106. Article 11 (Right to an adequate level of living). In addition to the reference to adequate food in the guidelines, the Committee asked States parties to indicate in what ways measures taken to improve methods of production, conservation and distribution of food by making full use of

technical and scientific knowledge had contributed towards, or had impeded, the realization of the right to adequate food and also asked States to describe "the impact of those measures in terms of ecological sustainability and the protection and conservation of food producing resources".

107. With regard to the right to adequate housing, which is an integral part of article 11, the States parties were asked to furnish data on homeless individuals and families, evictions, laws affecting the realization of the right to housing including legislation, such as legislation concerning environmental planning and health in housing and human settlements. (Author's underlining)

108. Article 12 (Right to health). States parties are requested to supply information on national health policy, access of the population to health services (clean water, excreta disposal facilities, etc.) measures taken to improve environmental hygiene and specific action to help vulnerable and disadvantaged groups. States parties are asked also to indicate the measures taken to maximize community participation in the planning, organization, operation and control of primary health care. (Author's underlining)

109. Article 15 (Cultural rights). States parties are requested among other things to report measures taken to assist ethnic groups, minorities and indigenous populations to become aware of their cultural heritage and to take advantage of it and also the measures taken to ensure that scientific and technical progress is not used for purposes contrary to the enjoyment of human rights, in particular the right to life, health, individual freedom and privacy, etc. (Author's underlining)

110. In the third place, in examining the reports submitted by States parties, members of the Committee are paying increasing attention to environmental aspects which may affect the realization of the rights recognized by the Covenant. Thus at its fifth session, members of the Committee made inquiries about the ecological problems that had been encountered by a State party and the measures taken to limit the effects of environmental degradation in connection with the implementation of article 12 (the right to health). The State party was also asked for information on measures taken to control pollution and requested to specify the measures taken to improve urban and rural housing. The WHO representative gave the Committee information on the encroachment of human settlements in the case of one State party, and indicated that the establishment of major industrial projects was leading to soil degradation and erosion. 29/

Notes

1/ An analysis by the Sierra Club Legal Defense Fund, in "Human Rights and the Environment", was made available to the Special Rapporteur. The constitutional provisions reproduced in Chapter I are taken from that report.

2/ See R. Zerguine: "La législation de l'environnement en Algérie", paper presented to the Congrès international de défense sociale, Paris, 8-12 October 1991.

3/ See A. Hatzopoulos: "La loi 1650/86 concernant la protection de l'environnement en Grèce", Revue juridique de l'environnement, 1991, (1), pp. 39 to 47.

4/ See Revue juridique de l'environnement, 1991, (1), pp. 99 to 107.

5/ See Yearbook of International Environmental Law, vol. 1, 1990, G. Handl, ed., p. 255.

6/ Convention of the Organization of African Unity: the text is reproduced in International Legal Materials, vol. 30 (1991), p. 773.

7/ Natural Heritage Institute, Preparatory Materials for Informal Meetings on Issues Concerning International Human Rights and the Environment, April 1991.

8/ Report of the Conference on Security and Cooperation in Europe Meeting on the Environment (CSCE/SEM.36, 2 November 1989).

9/ See text of the Convention on the Transboundary Effects of Industrial Accidents, in Conventions on the Environment, United Nations Economic Commission for Europe (GE.92-21432), 1992. The text was adopted at the fifth session of the Senior Advisers on environmental and water problems on 17 March 1992. See also the text of the Convention on Environment Impact Assessment in a Transboundary Context, adopted on 25 February 1991.

10/ See Convention on the Protection and Use of Transboundary Watercourses and International Lakes adopted on 17 March 1992, in Conventions on the Environment, op.cit.

11/ See for example Council of Europe/European Social Charter, Committee of Independent Experts - Conclusions IX-2, Strasbourg C.E., 1986, p. 71, (Reports of Austria and Cyprus); ibid., Conclusions XI-1, Strasbourg, C.E., 1989, p. 119 (Reports of Sweden and the United Kingdom).

12/ See for example the reports of Germany and Italy in ibid., Conclusions IX-2, p. 71 and 72.

13/ Ibid., p. 71 and 72.

14/ Ibid., Conclusions XI-1, p. 118.

15/ Council of Europe - European Social Charter, Case Law on the European Social Charter - Supplement, Strasbourg (C.E.), 1986, p. 37.

16/ Council of Europe/European Social Charter, Case Law on the European Social Charter, Strasbourg (C.E.), 1982, p. 105.

17/ Ibid., p. 104. With regard to the protection of health against environmental hazards under article 11 of the European Charter, see also: Council of Europe, doc. 6030 of 22 March 1989, p. 9, C.E.; Governmental Committee on the European Social Charter, 10. Report (1989), p. 28 (control of

atmospheric pollution); Council of Europe/European Social Charter, Committee of Independent Experts - Conclusions X-2, Strasbourg, C.E., 1988, p. 111 and 112 (reduction of atmospheric pollution); Council of Europe/European Social Charter, Committee of Independent Experts - Conclusions X-1, Strasbourg, C.E., 1987, p. 108 (reduction of atmospheric pollution, control of air and water pollution).

18/ This analysis is based on two recent articles communicated to the Special Rapporteur by the authors. See: Stefan Weber, "Environmental Information and the European Convention on Human Rights", Human Rights Law Journal, vol. 12, No. 5, 31 May 1991, pp. 177 to 185; Magulonne Déjeant-Pons, "L'insertion du droit de l'homme à l'environnement dans les systèmes régionaux de protection des droits de l'homme", Revue universelle des droits de l'homme, vol. 3, No.11, 30 November 1991, pp. 461 to 470.

19/ European Community Council Directive 90/313, Official Journal of the European Communities, No. 158 of 23 June 1990, p. 56. For a comprehensive evaluation of European environment policy, see also Raphaël Romi, L'Europe et la protection juridique de l'environnement, Victoire-éditions, Paris, 1990.

20/ Powell and Rayner, Judgment of 21 February 1990, Publications of the European Court of Human Rights, Series A, vol. 172.

21/ The Skärby Case, Judgment of 28 June 1990, Publications of the European Court of Human Rights, Series A, vol. 180-B.

22/ The Fredin Case, Judgment of 18 February 1991, Publications of the European Court of Human Rights, series A, Judgments and Decisions, vol. 192.

23/ Oerlemans v. Netherlands, Judgment of 27 November 1991, Publications of the European Court of Human Rights, series A, vol. 219.

24/ Case No. 7615 of 5 March 1985, in the annual report of the Inter-American Commission on Human Rights, 1984-1985 (DEA/SER.L.V/II.66).

25/ Petition dated 25 June 1990 communicated to the Special Rapporteur by the Sierra Club Legal Defence Fund, pp. 2, 22 and 26.

26/ Annual report of the Human Rights Committee (A/45/40), vol. II, annex IX A.

27/ Report of the Committee on Economic, Social and Cultural Rights, on its fifth session (E/1991/23-E/12/1990/8, Annex III).

28/ E/1991/23-E/C.12/1990/8, Annex IV.

29/ E/1991/23-E/C.12/1990/8, paras. 145 to 148.

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Agenda item 4

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

HUMAN RIGHTS AND THE ENVIRONMENT

Progress report prepared by Mrs. Fatma Zohra Ksentini, Special Rapporteur, in accordance with Sub-Commission resolution 1991/24

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CHAPTER IV - UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT

111. The United Nations Conference on Environment and Development (UNCED), held in Rio de Janeiro (Brazil) from 3-14 June 1992, was a major event some of the results of which are worth noting as pertinent to this study.

A. Rio Declaration on Environment and Development

112. The Earth Summit solemnly adopted a declaration of 27 principles with the goal, as stated in the preamble, of establishing a new and equitable global partnership through the creation of new levels of cooperation among States, key sectors of societies and peoples. The Conference, recognizing the integral and interdependent nature of the Earth, the home of mankind, adopted the Rio Declaration on Environment and Development, which, while not a legally binding international instrument, nevertheless represents a moral undertaking to observe the principles embodied in it. The Special Rapporteur wishes to refer to a number of those principles which appear to be closely related to the scope of this study.

"Principle 1

Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

Principle 2

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

Principle 3

The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

Principle 4

In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

Principle 5

All States and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.

[...]

Principle 10

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Principle 11

States shall enact effective environmental legislation. [...]

[...]

Principle 13

States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.

Principle 14

States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.

Principle 15

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

[...]

Principle 18

States shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Every effort shall be made by the international community to help States so afflicted.

Principle 19

States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.

Principle 20

Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.

[...]

Principle 22

Indigenous people and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

Principle 23

The environment and natural resources of people under oppression, domination and occupation shall be protected.

Principle 24

Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary.

Principle 25

Peace, development and environmental protection are interdependent and indivisible."

B. The Agenda 21 programme

113. The Conference adopted a comprehensive programme of action known as "Agenda 21" in the form of a plan for implementation in the various areas relating to sustainable development of the Earth. As pointed out by the Conference, the programme areas that constitute Agenda 21 are described in terms of the basis for action, objectives, activities and means of implementation. Agenda 21 is a dynamic programme. It will be carried out by the various actors according to the different situations, capacities and priorities of countries and regions in full respect of all the principles contained in the Rio Declaration on Environment and Development. It could

evolve over time in the light of changing needs and circumstances. This process marks the beginning of a new global partnership for sustainable development.

114. The programme of action set out in the 800 or so pages adopted by the Conference cannot be reproduced here. Suffice it to say that it covers such diverse areas as international cooperation to accelerate sustainable development in developing countries and related domestic policies; combating poverty; changing consumption patterns; protection and promotion of human health conditions; promoting a sustainable pattern of human settlements; integration of environment and development in decision-making; protecting the atmosphere; combating deforestation; combating desertification; protection of the ocean and all kinds of seas; protection of freshwater resources; environmentally sound management of toxic chemicals and hazardous and radioactive wastes, including the prevention of illegal international traffic in such wastes; strengthening the role of major groups such as women, youth, indigenous peoples and non-governmental organizations.

C. Financial resources and mechanisms

115. The Conference recognized that economic growth, social development and poverty eradication were the first and overriding priorities in developing countries and were essential to meeting national and global sustainability objectives. In the light of the global benefits to be realized by the implementation of Agenda 21 as a whole, providing developing countries with effective means, inter alia, financial resources and technology, without which it would be difficult for them to fully implement their commitments, would serve the common interests of developed and developing countries and of humankind in general, including future generations.

116. International cooperation for sustainable development should also be strengthened in order to support and complement the efforts of developing countries, particularly the least developed countries. All countries should assess how to translate Agenda 21 into national policies and programmes through a process that will integrate environment and development considerations. National and local priorities should be established by means that included public participation and community involvement, promoting equal opportunity for men and women.

117. For an evolving partnership among all countries of the world, including in particular between developed and developing countries, sustainable development strategies and enhanced and predictable levels of funding in support of longer term objectives were required. For that purpose, developing countries should articulate their own priority actions and needs for support and developed countries should commit themselves to addressing those priorities. In that respect, consultative groups and round tables and other nationally based mechanisms could play a facilitative role.

118. The implementation of the huge sustainable development programmes of Agenda 21 would require providing developing countries with substantial new and additional financial resources. Grants or concessional financing should be provided according to sound and equitable criteria and indicators. The

progressive implementation of Agenda 21 should be matched by the provision of such necessary financial resources. The initial phase would be accelerated by substantial early commitments of concessional funding.

119. With regard to means of implementation, the Conference agreed that in general the financing for the implementation of Agenda 21 would come from a country's own public and private sectors. For developing countries, particularly the least developed countries, overseas development aid was a main source of external funding, and substantial new and additional funding for sustainable development and implementation of Agenda 21 would be required. Developed countries reaffirmed their commitments to reach the United Nations target of 0.7 per cent of GNP for overseas development aid, as soon as possible and to ensure a prompt and effective implementation of Agenda 21. Some countries agreed or had agreed to reach the target by the year 2000. It was decided that the Commission on Sustainable Development would regularly review and monitor progress towards that target. That review process should systematically combine the monitoring of implementation of Agenda 21 with a review of the financial resources available.

120. The Conference also agreed that funding for agenda 21 and other outcomes of the United Nations Conference on Environment and Development should be provided in a way which maximized the availability of new and additional resources and which used all available funding sources and mechanisms. Those included, among others: multilateral development banks and funds (International Development Association); regional and subregional development banks; the Global Environmental Facility, managed jointly by the World Bank, United Nations Development Programme and United Nations Environment Programme; the relevant specialized agencies, other United Nations bodies and other international organizations; multilateral institutions for capacity-building and technical cooperation; bilateral assistance programmes; debt relief; private funding; investment; and innovative financing.

121. With regard to the specific issue of debt relief, the Conference recognized that it was important to achieve durable solutions to the debt problems of low and middle income developing countries in order to provide them with the needed means for sustainable development. Measures to address the continuing debt problems of low and middle income countries should be kept under review. All creditors in the Paris Club should promptly implement the agreement of December 1991 to provide debt relief for the poorest heavily indebted countries pursuing structural adjustment; debt relief measures should be kept under review so as to address the continuing difficulties of those countries.

122. The Conference underlined that a supportive international and domestic economic climate conducive to sustained economic growth and development was important, particularly for developing countries, in order to achieve sustainability. The Secretariat of the Conference estimated that the average annual costs (1993-2000) of implementing the activities in Agenda 21 in developing countries to be over $600 billion including about $125 billion on grant or concessional terms from the international community.

D. Commission on sustainable development

123. In order to ensure the effective follow-up of the Conference, as well as to enhance international cooperation and rationalize the intergovernmental decision-making capacity for the integration of environment and development issues and to examine the progress of the implementation of Agenda 21 at the national, regional and international levels, a high-level commission on sustainable development should be established in accordance with Article 68 of the Charter of the United Nations. This commission would report to the Economic and Social Council in the context of the Council's role under the Charter vis-à-vis the General Assembly. It would consist of representatives of States elected as members with due regard to equitable geographical distribution. Representatives of non-member States of the commission would have observer status. The commission should provide for the active involvement of organs, programmes and organizations of the United Nations system, international financial institutions and other relevant intergovernmental organizations, and encourage the participation of non-governmental organizations, including industry and the business and scientific communities. The first meeting of the commission should be convened no later than 1993. The General Assembly, at its forty-seventh session, should determine specific organizational modalities for the work of this commission, such as its membership, its relationship with other intergovernmental United Nations bodies dealing with matters related to environment and development, and the frequency, duration and venue of its meetings.